Supreme Court, U.S.
FILED
JAN 9 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

79-1078

No. .....

PITTSBURGH METRO AREA
POSTAL WORKERS UNION, AFL-CIO,
Petitioner,

v.

UNITED STATES POSTAL SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

JOSEPH J. PASS, JR.
ERNEST B. ORSATTI
JUBELIRER, PASS
& INTRIERI, P. C.
2000 Lawyers Building
Pittsburgh, Pennsylvania 15219

Counsel for Petitioner,
Pittsburgh Metro Area
Postal Workers Union,
AFL-CIO

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15227
PHONE: (412) 881-7463

INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	3
A. Proceedings Below	3
B. Statement of Facts	3
Reasons for Granting the Writ	5
I. The denial of standing to Metro to bring an action in Federal Court to enforce a grievance settlement is in direct conflict with the express language of the Postal Reorganization Act and creates inconsistent judicial interpretations between the Circuits	5
II. The denial of standing to Metro to bring an action in Federal Court to enforce a grievance settlement is contrary to federal labor policy and would severely interfere with effective labor dispute settlement throughout the national postal system and as such, a question of great public importance is involved and should be reviewed by this Court	7
III. The lower courts, in not accepting as true the well-pleaded allegations in the Complaint, have departed from the usual course of judicial proceedings and run contrary to a decision of this Court	9

Page

Conclusion 10

Appendix A—Judgment Order 11

Appendix B—Opinion 13

TABLE OF AUTHORITIES.

Cases:

American Postal Workers Union, Dallas Area Local v. United States Postal Service, 396 F. Supp. 608 (N.D. Tex. 1975) 6

American Postal Workers Union (Tyler, Texas Local) v. United States Postal Service, 356 F. Supp. 335 (E.D. Tex. 1972) 6

International Brotherhood of Teamsters v. Vogt, 354 U.S. 284 8

Jenkins v. McKeithen, 395 U.S. 411 (1969) 9

Miles v. United States Postal Service, 561 F.2d 1348 (9th Cir. 1977) 5,6

Retail Clerks International Association v. Lion Dry Goods, 369 U.S. 17 (1962) 6,7,9

Textile Workers v. Lincoln Mills, 353 U.S. 448 7

United Mine Workers of America, District No. 2 v. Barnes & Tucker Company, 561 F.2d 1093 (3d Cir. 1977) .. 7

Statutes:

Labor-Management Relations Act of 1947, as amended (61 Stat. 136, *et seq.*) (29 U.S.C. § 141, *et seq.*):
Section 301 (29 U.S.C. § 185) 5,6,9

Postal Reorganization Act (84 Stat. 719, *et seq.*) (39 U.S.C. § 101, *et seq.*):
Section 1208(b) (39 U.S.C. § 1208(b)) 2,5,6

IN THE

Supreme Court of the United States

October Term, 1979

No. .....

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

Pittsburgh Metro Area Postal Workers Union (hereinafter "Metro"), Petitioner, prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on October 12, 1979, in which the Third Circuit affirmed the decision of the United States District Court for the Western District of Pennsylvania, made November 17, 1978, which granted the Respondent's Motion to Dismiss Petitioner's Complaint.

Opinions Below

The Opinion of the Court of Appeals has not yet been reported, but a copy thereof is attached hereto in Appendix A. The Opinion of the United States District Court for the Western District of Pennsylvania is reported at 463 F. Supp. 54 (W.D. Pa. 1978) and a copy thereof is attached hereto in Appendix B.

Jurisdiction

The judgment of the Court of Appeals was entered on October 12, 1979 (Appendix A).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

I. Whether or not the Petitioner, Metro, has standing to bring an action in Federal Court to specifically enforce the settlement agreement between Metro and Respondent, United States Postal Service, under the Postal Reorganization Act (39 U.S.C. § 101, *et seq.*).

II. Whether or not Petitioner's suit was properly dismissed for failure to exhaust the contractual grievance procedures.

Statutes Involved

This case involves the interpretation and application of Section 1208(b) of the Postal Reorganization Act (39 U.S.C. § 1208(b)), which recites as follows:

> "(b) Suits for violation of contracts between the Postal Service and a labor organization representing Postal Service employees, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy."

Statement of the Case

A. Proceedings Below.

Metro filed a Complaint in the United States District Court for the Western District of Pennsylvania at Civil Action No. 78-590, seeking judicial enforcement of a dispute settlement agreement regulating the handling of secondary mail. The Complaint also sought to enjoin the United States Postal Service, Pittsburgh facility (hereinafter "Postal Service") from implementing a new distribution policy which contravened the distribution policy established by the prior settlement agreement.

The Postal Service filed a Motion to Dismiss, or in the Alternative for Summary Judgment, and Metro filed a Cross Motion for Summary Judgment. On November 17, 1978, the Honorable Daniel J. Snyder, Judge of the United States District Court for the Western District of Pennsylvania, entered an Order granting the Postal Service's Motion to Dismiss. On December 4, 1978, Metro filed an appeal to the United States Court of Appeals for the Third Circuit and on October 12, 1979, the Third Circuit entered an Order affirming the decision of the District Court adopting the District Court's rationale.

B. Statement of Facts.

Petitioner, Metro, is the recognized bargaining representative for Postal Service employees working at the Pittsburgh facility (R. 37a, 38a).[1] In the administration of its duties as a bargaining representative, Metro became involved in a dispute concerning the distribution of secondary mail. This dispute centered around the facilities where secondary mail would be broken down for distribution by individual carrier routes (R. 49a).

---

[1] All page references will be to the Appendix filed in the Court of Appeals.

Prior to July 1976, the majority of incoming secondary mail was handled by the main office in Pittsburgh for 35 branches and stations, while seven other branches and stations distributed their own secondary mail (R. 49a). On July 12, 1976, the secondary distribution for three of the seven stations was transferred to the main office (R. 49a).

On October 7, 1976, Metro filed a written grievance protesting that secondary mail which would be handled by the main office was being sent to other stations (R. 33a). This dispute was resolved on December 3, 1976, by virtue of a settlement agreement arrived at during the preliminary steps of the grievance procedure (R. 35a). The settlement agreement was evidenced by a letter from Mr. Frank J. Buttner, employee and labor relations director, to the plaintiff's business agent, which acknowledged the practice of not sending mail to other stations if the mail could be worked in the main office without sacrificing service standards (R. 35a). In addition, the settlement agreement preserved maximum overtime work opportunities for mail processing clerks at the Pittsburgh facility (R. 35a).

The December 1976 agreement regulating the distribution of secondary mail remained in effect until April 19, 1978 (R. 7a, 17a). In April 1978, the Postal Service unilaterally changed the method of distribution of secondary mail to other locations (R. 17a, 32a).

In May 1978, Metro commenced the instant litigation seeking to specifically enforce the prior dispute settlement agreement and to enjoin the Postal Service from implementing the new distribution procedure (R. 2a-6a).

REASONS FOR GRANTING THE WRIT

I. The denial of standing to Metro to bring an action in Federal Court to enforce a grievance settlement is in direct conflict with the express language of the Postal Reorganization Act and creates inconsistent judicial interpretations between the Circuits.

Section 1208(b) of the Postal Reorganization Act (39 U.S.C. § 1208(b)) specifically provides Federal Court jurisdiction in "suits for violation of contracts between the Postal Service and a labor organization representing Postal Service employees or between any such labor organizations."

It is undisputed that Metro is a labor organization (R. 3a). The collective bargaining agreement specifically provides for recognition of Metro as the bargaining agent for these employees (R. 38a), and Metro has so plead (R. 3a, 4a). Thus, Section 1208 expressly gives Metro standing to bring suit in the instant case.

When Congress utilized the terminology "a labor organization representing Postal Service employees" it did not intend to limit the applicability of Section 1208 to the national bargaining representative. If Congress had intended to place such a narrow construction on Section 1208, it would have expressly limited standing to "exclusive bargaining agents."

In *Miles v. United States Postal Service*, 561 F.2d 1348 (9th Cir. 1977) the U.S. Court of Appeals for the Ninth Circuit ruled that Section 1208(b) creates a statutory right to sue for breach of contract by individual Postal Service employees as well as labor organizations representing such employees. Since the language of Section 1208 closely tracts that of Section 301 of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. § 185), Section 1208 has been interpreted

in a parallel fashion. *Miles v. United States Postal Service, supra.* In *Retail Clerks International Association v. Lion Dry Goods*, 369 U.S. 17 (1962), this Court rejected the argument that suits under Section 301 are limited to the exclusive bargaining representative for the purpose of collective bargaining.

If the lower courts' ruling were permitted to stand, the result would be that individual employees and the national bargaining agent would have standing to sue but the local bargaining agent, who deals directly with employee problems on a day-to-day basis, would not have standing. Clearly, Congress did not intend such an absurd result.

Furthermore, in two district court cases in the Fifth Circuit, local postal unions were permitted to bring actions against the United States Postal Service involving the national agreement. *American Postal Workers Union, Dallas Area Local v. United States Postal Service*, 396 F. Supp. 608 (N.D. Tex. 1975) and *American Postal Workers Union (Tyler, Texas Local) v. United States Postal Service*, 356 F. Supp. 335 (E.D. Tex. 1972). In neither of these cases were the local unions right to bring the action under Section 1208 challenged nor were they appealed to the Court of Appeals. In any event, the decision of the lower courts in the instant case and the above-cited district court cases present a conflict between the circuits on the question of standing.

Because of the direct conflict with the express language of the Postal Reorganization Act regarding standing and because of the inconsistent interpretation of Section 1208(b) between the District Courts in the Fifth Circuit and the Third Circuit Court of Appeals, the instant case presents the type of question which should be resolved by this Court.

II. The denial of standing to Metro to bring an action in Federal Court to enforce a grievance settlement is contrary to federal labor policy and would severely interfere with effective labor dispute settlement throughout the national postal system and as such, a question of great public importance is involved and should be reviewed by this Court.

Federal labor policy favors the peaceful resolution of labor disputes through meaningful collective bargaining. If the local unions charged with the responsibility of administering the labor agreement at the local level were denied federal court standing to enforce grievance settlements the grievance procedure would be rendered meaningless and the position of the local unions would be fatally undermined. Effective local dispute settlement and local agreements would be impossible if the decision of the lower courts were permitted to stand. The national parent organization would be required to involve itself with each and every grievance throughout the national postal system to prevent a total breakdown of the grievance procedure. Denial of federal court standing to the local union emasculates the local union and frustrates the federal policy of stabilization of labor relations. *Retail Clerks International Association v. Lion Dry Goods, supra; Textile Workers v. Lincoln Mills*, 353 U.S. 448 at 453-454.

The District Court's conclusion that settlements short of arbitration are not judicially enforceable is contrary to basic federal labor law and policy. As the Third Circuit noted in *United Mine Workers of America, District No. 2 v. Barnes & Tucker Company*, 561 F.2d 1093 (3d Cir. 1977), it is not arbitration *per se* that federal policy favors, but rather final adjustment of differences by a means selected by the parties. The rationale that determinations made pursuant to the parties' chosen procedure led the Third Circuit to conclude that

final and binding agreements arrived at during the preliminary steps of the grievance procedure are judicially enforceable. Although the national agreement does not explicitly state that disputes resolved short of arbitration are final and binding, this is a necessary implication. The grievance procedure provides that the moving party can continue to appeal *adverse* decisions, and these appeals eventually culminate in arbitration. If agreements reached during the preliminary steps of the grievance procedure are not considered final and binding, the contracting parties will be encouraged to resolve disputes by agreeing to commitments which they do not intend to honor. The important policy considerations and objectives which serves as the cornerstone of our federal labor policy will be further enhanced by a realistic assessment of the parties' intent. In the instant case, the finality and binding effect of settlement agreements is clearly evidenced by the fact that only adverse decisions can be appealed to arbitration.

The instant case thus presents a matter of great public importance affecting labor relations throughout the national postal system. When matters of such importance are presented, this Court will generally grant certiorari to consider the question. *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284.

III. The lower courts, in not accepting as true the well-pleaded allegations in the Complaint, have departed from the usual course of judicial proceedings and run contrary to a decision of this Court.

Metro averred in its Complaint that the dispute emanating from the change of operations in April 1978, was the same dispute resolved by the prior grievance settlement. Notwithstanding Metro's averments, the District Court and the Court of Appeals dismissed the action for failure to utilize the grievance procedure. In doing so, the lower courts refused to consider whether or not the 1978 grievance was the same type as that involved in the prior settled grievance contending that the question was one for an arbitrator.

In *Retail Clerks, supra*, this Court held that a certain statement of understanding constituted a "contract" within the meaning of Section 301 of the Labor-Management Relations Act and was, therefore, enforceable without resort to the grievance procedure. In dismissing the instant action, the lower courts ignored Metro's well-pleaded facts and refused to allow Metro the opportunity to prove that the instant case fell within this Court's ruling in *Retail Clerks, supra.*

This Court has held that in considering a Motion to Dismiss "the allegations of the Complaint are taken as admitted and the Complaint is liberally construed in favor of the plaintiff." *Jenkins v. McKeithen*, 395 U.S. 411 at 421 (1969). The lower courts' refusal to consider the question of whether the underlying grievance was in fact the same as the grievance involved in the prior settled grievance is inconsistent with this Court's decision in *Retail Clerks*, and their disregarding Metro's well-pleaded averments in its Complaint is a marked departure from the usual course of judicial proceedings and this Court's decision in *Jenkins v. McKeithen, supra.*

Conclusion

This Court should grant certiorari to review the questions presented in this Petition.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.,

JOSEPH J. PASS, JR.,
ERNEST B. ORSATTI,
2000 Lawyers Building,
Pittsburgh, Pennsylvania 15219,

Counsel for Petitioner,
Pittsburgh Metro Area Postal
Workers Union, AFL-CIO.

APPENDIX A

Judgment Order

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1100

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO,

Appellant,

v.

UNITED STATES POSTAL SERVICE.

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 78-0590)

Submitted Under Third Circuit Rule 12(6)
October 12, 1979
Before: ALDISERT and HUNTER, *Circuit Judges*, and MEANOR, *District Judge.**

After consideration of all contentions raised by appellant, and for the reasons set forth in the district court opinion by the Honorable Daniel J. Snyder, Jr., *Pittsburgh Metro Area Postal Workers Union v. United States Postal Service*, 463 F.Supp. 54 (W.D.Pa. 1978); it is

* Honorable H. Curtis Meanor, of the United States District Court for the District of New Jersey, sitting by designation.

Appendix A-Judgment Order.

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

ALDISERT,
Circuit Judge.

Attest:
THOMAS F. QUINN,
Thomas F. Quinn, Clerk.

DATED: OCT 12 1979

Certified as a true copy and issued in lieu of a formal mandate on November 5, 1979.

Test: THOMAS F. QUINN
Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX B

Opinion

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action No. 78-590E

SNYDER, *J.*

The United States Postal Service moves to dismiss the action of the Pittsburgh Metro Area Postal Workers Union (Metro) in which it seeks to enforce a settlement of a labor grievance. The Motion will be granted.

I. BACKGROUND

There were two disputes between Metro, which represents Pittsburgh area postal workers, and the Postal Service as to where secondary mail in the Pittsburgh Post Office would be distributed, *i.e.* where mail would be broken down into individual carrier routes. Prior to July 1976, the majority of incoming secondary mail was distributed at the Main Office in

Downtown Pittsburgh for 35 branches and stations, while 7 other branches and stations distributed their own secondary mail. On July 12, 1976, the secondary distribution for three of these seven stations was transferred to the Main Office. On October 7, 1976, Metro filed a grievance pursuant to the National Agreement between the United States Postal Service and the American Postal Workers Union, *et al.* (the Agreement), protesting that some secondary mail was still being sent to three of the stations. The dispute was settled prior to final arbitration, as evidenced in a letter written by Frank Buttner, Employee and Labor Relations Director for the Pittsburgh Post Office to Metro's Business Agent on December 3, 1976, stating "the amount of mail sent to the stations and branches must be predicated on their capabilities to work this mail without jeopardizing any overtime opportunities for mail processing clerks." The effect was that secondary mail would be sent to stations and branches only after the clerks at the Main Office had been given the opportunity to work *maximum* overtime. In April of 1978, the Postal Service announced a decision to transfer secondary distribution of two classes of mail, Irregular Parcel Post and First Class Small Parcels and Rolls, to certain stations and branches.

II. THE CONTENTIONS

Metro maintains that the new distribution procedure is a violation of the 1976 settlement and asks this Court to enforce the terms of that settlement, and argues that the Postal Service's failure "to abide by the final and binding decision of the grievance settlement procedure of the collective bargaining agreement renders the collective bargaining

agreement and its grievance settlement provision a nullity and amounts to a blatant repudiation of the Agreement." (Complaint ¶ 10)

The Postal Service argues that Metro is a "local" division of the national union, is not a signatory to the national agreement, and "does not have standing" to bring this action.[1]

III. DISCUSSION

At least two district courts appear to have permitted local branches of the national postal union to bring actions involving the national agreement. *American Postal Workers Union, Dallas Area Local v. United States Postal Service*, 396 F.Supp. 608 (N.D.Tex. 1975); *American Postal Workers Union v. United States Postal Service*, 356 F.Supp. 335 (E.D.Tex. 1972) (Plaintiff was the Tyler, Texas local). In neither case, however, was the question of the locals' right to bring the action discussed.

In *District 100, I.A.M. v. Campagnie Nationale Air France*, 414 F.Supp. 538 (S.D.N.Y. 1976), a district lodge of the International Association of Machinists and Aerospace Workers sought to compel the airlines to process a grievance. The Court granted the company's motion to dismiss, stating:

> "Even though the General Chairman of District 100 is authorized to sign collective bargaining agreements, it is clear that he signs *on behalf of the IAM*, not District 100. While District 100 may properly provide an authorized representative to handle grievance procedures at particular points on the system, . . . it cannot arrogate to itself the authority to sue as a party to a national labor agreement.
>
> * * *

Local Union No. 12405, District 50, UMW v. Martin Marietta Corp., 328 F.2d 945 (7th Cir. 1964), *cert. den.* 379 U.S. 880, 85 S.Ct. 147, 13 L.Ed.2d 87 (1965) cited by Air France, is apposite. There, as here, a local union brought suit to enforce provisions of a collective bargaining agreement to which it was not a party. The court affirmed dismissal of the suit on the ground that the corporation agreed to arbitrate disputes only with the bargaining agent and not with individual employees or the *Local* representative. The court relied on reasoning, applicable here, that the bargaining agent alone must have the power to decide which grievances to pursue so that the interests of *all* its principals may be best represented."

414 F.Supp. at 541-2.

The District Court in *BRAC v. REA Express, Inc.*, 344 F.Supp. 1370 (S.D.N.Y. 1972), reached the same conclusion concerning a dispute between the national union (Brotherhood of Railway, Airline and Steamship Clerks) and a local, subordinate unit (National Association of Express General Chairmen) over whether BRAC's International President had the authority to sign an arbitration agreement that was binding on the local organization and did, in fact, lead to an arbitration award. In dismissing the local's suit on behalf of BRAC to impeach the arbitration award, the Court said:

"The power to bring suit is one of the most important powers an organization has and must necessarily vest either in the organization's sovereign body or in the individual or group exercising general supervision of the organization. Obviously, it would create a chaotic

situation if every subordinate unit were empowered to bring suit on BRAC's behalf without receiving authorization from the international president or the Grand Lodge [the national organization].

Nowhere in the constitution, statutes or protective laws of BRAC or in the by-laws of the National Association of Express General Chairmen is any subordinate unit of the union given authority to sue in the name of the union.

* * *

BRAC is the collective bargaining agent for the employees. It signed the collective bargaining agreement whose terms it claimed were breached when it instituted the injunction suit. The agreement to arbitrate was signed by the parties to the collective bargaining agreement. Under the circumstances an attack on the authority of the international president of BRAC cannot be launched by the method adopted here.

344 F.Supp. at 1372.[2]

Counsel for the Postal Service has brought to our attention an unpublished order of dismissal, entered on January 16, 1978 in the case of *National Post Office Mail Handlers, Local 305 v. United States Postal Service*, No. 77-41-CIV-8, brought in the United States District Court for the Eastern District of North Carolina, where the Postal Service refused to abide by resolutions of grievances favorable to the union that were reached at intermediate steps of the grievance procedure set forth in the national collective bargaining agreement. Judge F.T. Dupree, Jr., dismissed that action on the grounds that the union lacked standing to sue and had failed to exhaust its arbitration remedy. We concur.

The national agreement in the instant case includes provisions for local unions and their representatives. Agreement, Article II, Section 2 (regional level Joint Committees on Human Rights); Article XIII, C (local negotiations over light duty assignments for ill or injured employees); Article XIV, Sections 4-9 (local safety and health committees); Article XV, Section 2 (regional representation of employees in the initial stages of the grievance procedure); Article XVII, Section 5 (local union's responsibility to implement "no strike" clause); Article XXX (local negotiation and implementation of 22 specific items). No provision is made that the locals, such as Metro, are free to sue on matters concerning the national contract. Although this action is one to enforce a *local* settlement agreement, it was brought under the grievance procedures in the national agreement to enforce the Postal Service's contractual obligations under the national agreement. Those same grievance provisions do not allow a local even to arbitrate an issue without written authorization to the employer at the national level from the national president. Agreement, Article XV, Section 3.

Metro here claims the right to enforce those provisions in court without the permission of the national organization. This, to us, is inconsistent with the terms of the contract, and, when viewed together with the fact that Metro is not a signatory of the agreement and has made no showing of a special grant, *i.e.* pursuant to the national union's constitution or by-laws, compels the conclusion that they cannot bring this action.

IV. ENFORCEABILITY OF THE SETTLEMENT

While not required for our discussion, we also express our serious doubts as to whether the settlement agreement in this case is enforceable in the District Court. A District Court has

jurisdiction pursuant to 29 U.S.C.A. § 185, and, therefore, under 39 U.S.C.A. § 1208,[3] to enforce a resolution of a grievance that is final and binding under a collective bargaining agreement, although it is not an arbitration award. *General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co.*, 372 U.S. 517, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963). Accord, *Teamsters Local Union v. Braswell Motor Freight Lines*, 392 F.2d 1 (5th Cir. 1968), *cert. denied* 401 U.S. 937, 91 S.Ct. 926, 28 L.Ed.2d 217 (1971); *International Union of Operating Engineers v. Dow Chemical Co.*, 348 F.Supp. 1149 (S.D.Tex. 1972).

In *UMW, District 2 v. Barnes and Tucker Co.*, 561 F.2d 1093 (3rd Cir. 1977), the action for specific performance of a grievance settlement agreement was dismissed. The Court of Appeals affirmed on the grounds that the terms of the settlement were not sufficiently specific to allow enforcement and would require the district court to interpret the collective bargaining agreement; they also held that agreements to settle grievances before submission of the issue to arbitration were enforceable under the National Bituminous Coal Wage Agreement of 1971, because "[B]y the *express terms* of the agreements, settlements reached at any step [of the grievance procedure] are final and binding on both parties." 561 F.2d at 1095 (Emphasis added). The Court reasoned:

> "We agree with the Union that where a *collective bargaining agreement designates settlement agreements as being final* and binding, the fact that a settled grievance does not proceed to arbitration does not preclude judicial enforcement of the settlement agreement.
>
> * * *

It is not arbitration per se that federal policy favors, but rather final adjustment of differences by a means selected by the parties. If the parties agree that a procedure other than arbitration shall provide a conclusive resolution of their differences, federal labor policy encourages that procedure no less than arbitration. A determination made pursuant to that chosen procedure is no less enforceable in a federal court than is an arbitration award.

* * *

In this case, *both* the 1971 and 1974 *Agreements provide that settlements reached at any step of the grievance procedures shall be final and binding* on both parties. We therefore believe that the settlement agreements at issue are as enforceable as arbitration awards.

561 F.2d at 1096, 1097 (Emphasis added).

The collective bargaining agreement now before the Court contains no provisions comparable to those in the mineworkers contract; to the contrary, it provides "[t]he arbitrator's decision will be final and binding." (Agreement, Article XV, Section 3, page 26). To conclude that the 1976 settlement here is enforceable by "local" action would be inconsistent with the power of the national leadership to decide which issues will go to arbitration for resolution in a fashion that is final and binding on all members of the union. Metro, the local union here, urges an interpretation of its powers that would allow it or the Postal Service to seek a final and binding determination of an issue, perhaps a much disputed and important issue, on a strictly local basis, which would oust any power on the part of the national organization to seek a different resolution of the problem as to those particular local employees.

V. FAILURE TO EXHAUST GRIEVANCE PROCEDURES

Finally, we believe, this Complaint must be dismissed for failure to exhaust the grievance procedures. Even if the settlement agreement was final and binding under the collective bargaining agreement, there is a serious question here as to whether the changes made by the Postal Service which led to the 1976 settlement and those which triggered the current dispute are sufficiently alike for the earlier agreement to render further grievance procedures unnecessary. Resolution of that question is itself one properly for the grievance machinery.

In *Local 103, I.U.E. v. RCA Corp.*, 516 F.2d 1336 (3rd Cir. 1975), the Court of Appeals held that the lower court could not enjoin the company's effort to proceed with arbitration on the ground that the issue had previously been subject to arbitration, stating:

> "Although we affirm the judgment of the district court, we do so for a different reason: It is the function of the arbitrator, not the court, to decide whether the 'same question or issue' had been the subject of arbitration within the meaning of the collective bargaining agreement.
>
> The union would have a federal court interpret this collective bargaining agreement and rule, as a matter of federal law, that the question or issue presented in the current grievance was the subject of arbitration on 1946. We decline to allocate this interpretive role to the district courts."

516 F.2d at 1339 (Footnote omitted).

The Court based its decision primarily on the principle that the district court is restricted to deciding whether a grievance is the type of dispute covered by the arbitration provisions of a particular collective bargaining agreement. *John Wiley & Sons v. Livingston*, 376 U.S. 543, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964). The Court also noted, however, that the collective bargaining agreement contained a clause expressly prohibiting rearbitration of grievances and that any resolution of the question of whether the issue had already been the subject of arbitration would involve the district court in the interpretation of that provision.

In *Avco Corp. v. Local 787, UAW*, 459 F.2d 968 (3rd Cir. 1972), the Court of Appeals reversed a District Court's denial of injunctive relief against employees who were refusing en masse to work overtime in contravention of a "no strike" clause in the collective bargaining agreement. In addition to deciding that the company had a right to initiate arbitration under the "employee-oriented" grievance machinery, the Court held that the District Court erred in deciding the question of whether the company's grievance was barred by a prior arbitration award which did not involve an identical fact situation. The Court of Appeals based its ruling on two grounds: (1) where there is a question as to the arbitrability of a grievance, all doubts must be resolved in favor of arbitration, *United Steelworkers of America v. Enterprise Wheel & Car*, 363 U.S. 593, 80 S.C. 1358, 4 L.Ed.2d 1424 (1960); and (2) an arbitrator, rather than a court, should resolve the issue of whether the determination of the first arbitrator was ap-

plicable to the second grievance. On this latter point, the Court stated:

> "The prior arbitration here held the issue of compulsory overtime was properly subject to the arbitration provision, and this much of the arbitrator's decision might well constitute a form of res judicata precluding the Union from relitigating that narrow issue. See *Local 616, IUE v. Byrd Plastics, Inc.*, 428 F.2d 23, 26 (3rd Cir. 1970). But res judicata would not bar arbitration of the dispute here because the other underlying issues disposed of in the first arbitration are not identical with those which would face the arbitrator if this matter were before him. First, the arbitrator would have to decide whether the action taken by Avco with respect to the employees who refused overtime in April, 1970, effectively terminated the condonation [of the refusal] upon which the first decision relied. If not, the arbitrator would then have to decide whether the first decision, framed in the context of individual action on the part of individual employees, applied to the concerted action of all employees. And in conjunction with that decision, the arbitrator would have to decide whether Avco had condoned in the past a concerted refusal to work overtime. Accordingly, the dispute was a proper subject matter for arbitration and was covered by the broad grievance procedure of the collective bargaining agreement."

459 F.2d at 973-4 (Footnote omitted).

Accord: *International Chemical Workers, Local No. 189 v. Purex Corp.*, 427 F.Supp. 338 (D.Neb. 1977), *affirmed* 566 F.2d 48 (8th Cir. 1977). Also see *Macneish v. New York Typographical Union No. 6*, 205 F.Supp. 558 (S.D.N.Y. 1962);

but see *Drake Motor Lines, Inc. v. Highway Truck Drivers and Helpers, Local 107 et al.*, 343 F.Supp. 1130 (E.D.Pa. 1972) (Court granted summary judgment for plaintiff-company in an action to enjoin arbitration of a labor grievance on the grounds that an earlier grievance involving identical parties, facts, and legal issues had already been arbitrated).

Here, the initial grievance involved the transfer of secondary mail to a small number of branches and stations. The current dispute concerns a change affecting the entire Pittsburgh Post Office as to only two classes of mail; the factual circumstances are far from identical. In addition, resolving this dispute raises complex considerations involving the efficient running of the Postal Service and implicating several provisions of the national collective bargaining agreement, including Article III, which protects management prerogatives. These are problems best resolved, whenever possible, by an arbitrator familiar with the language and workings of the shop and with "industrial common law". We have been reminded that even the "ablest judge cannot be expected to bring the same experience and competence [as an arbitrator] to bear upon the determination of a grievance, because he cannot be similarly informed." *Local 103, I.U.E. v. RCA Corp., supra,* at 1340, citing *Lewis v. A.F.S.C.M.E.*, 407 F.2d 1191 (3rd Cir.), *cert. denied* 396 U.S. 866, 90 S.Ct. 145, 24 L.Ed.2d 120 (1969).

An appropriate Order will be entered.

DAVID J. SNYDER, JR.,
United States District Judge.

Dated: Nov 17, 1979

cc: Joseph Pass, Esq.,
2000 Lawyers Building,
Pittsburgh, Pa. 15219,

Henry G. Barr, Esq.,
Asst. United States Attorney,

Anthony W. DuComb, Esq.,
P.O. Box 8601 G, Room 615,
Philadelphia, Pa. 19101.

FOOTNOTES

---

[1] The National Labor Relations Board has held that the National Postal Unions designated in the recognition clause of the Agreement are the appropriate bargaining unit for postal employees because "any less than nation-wide unit which does not at least encompass all employees within a district or sectional center is too fragmented for meaningful collective bargaining." *United States Postal Service*, 208 NLRB 948 (1974).

[2] Both *District 100, I.A.M. v. Campagnie Nationale Air France*, 414 F.Supp. 538 and *BRAC v. REA Express, Inc.*, 344 F.Supp. 1370, were decided under the Railway Labor Act, 45 U.S.C.A. § 151 *et seq.* Nevertheless, the principles relating to the relationship of the national and local unions are applicable here.

[3] The language of 39 U.S.C.A. § 1208 closely tracts that of the Labor Management Relations Act, 29 U.S.C.A. § 185, and has been interpreted in a parallel fashion. *Miles v. United States Postal Service*, 561 F.2d 1348 (9th Cir. 1977).

Order

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PITTSBURGH METRO AREA POSTAL WORKERS
UNION, AFL-CIO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action No. 78-590E

AND NOW, to-wit, this 17th day of November, 1978, after hearing and due consideration of the arguments and briefs of counsel, and for the reasons stated in the Opinion filed herewith,

IT IS ORDERED that the Defendant's Motion to Dismiss be and the same is hereby granted.

DAVID J. SNYDER, JR.,
United States District Judge.

cc: Joseph Pass, Esq.,
Henry G. Barr, Esq.,
Anthony W. DuComb, Esq.

Supreme Court, U. S.
FILED
MAR 4 1980
MICHAEL RODAK, JR., CLERK

No. 79-1078

In the Supreme Court of the United States

OCTOBER TERM, 1979

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO, PETITIONER

v.

UNITED STATES POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General

ALICE DANIEL
Assistant Attorney General

ROBERT E. KOPP
HOWARD S. SCHER
Attorneys
Department of Justice
Washington, D.C. 20530

STEPHEN E. ALPERN
Associate General Counsel

ANTHONY W. DuCOMB
Attorney
United States Postal Service
Washington, D.C. 20260

INDEX

Page

Opinions below 1

Jurisdiction 1

Questions presented 1

Statutory provision involved 2

Statement 2

Argument 5

Conclusion 10

CITATIONS

Cases:

American Postal Workers Union v. *United States Postal Service*, 356 F. Supp. 335 5

American Postal Workers Union, Dallas, Tex. Area Local v. *United States Postal Service*, 396 F. Supp. 608 5

BRAC v. *REA Express, Inc.*, 344 F. Supp. 1370 7-8

District 100, IAM v. *Compagnie Nationale Air France*, 414 F. Supp. 538 6-7

General Drivers, Warehousemen & Helpers, Local 89 v. *Riss & Co.*, 372 U.S. 517 9

Jenkins v. *McKeithen*, 395 U.S. 411 9

John Wiley & Sons, Inc. v. *Livingston*, 376 U.S. 543 9

Local 13, International Longshoremen's Union v. *Pacific Maritime Ass'n*, 441 F. 2d 1061, cert. denied, 404 U.S. 1016 6

Page

Cases—(Continued):

Local 103, International Union of Electrical Workers v. *RCA Corp.*, 516 F. 2d 1336 8-9

Local 12405, District 50, UMW v. *Martin Marietta Corp.*, 328 F. 2d 945 6

Malone v. *United States Postal Service*, 526 F. 2d 1099 6

Miles v. *United States Postal Service*, 561 F. 2d 1348 ..... 6, 7

National Association of Letter Carriers v. *Sombrotto*, 449 F. 2d 915 6

National Association of Letter Carriers v. *United States Postal Service*, 590 F. 2d 1171 6

National Post Office Mail Handlers, Local 305 v. *United States Postal Service*, 594 F. 2d 988 ..... 7, 8

Retail Clerks International Ass'n Local Unions Nos. 128 and 633 v. *Lion Dry Goods, Inc.*, 369 U.S. 17 7

United States Postal Service, 208 N.L.R.B. 948 5

United States Seelworkers of America v. *American Manufacuturing Co.*, 363 U.S. 564 8

Page

Statutes:

Labor Management Relations Act, 29 U.S.C. 141 *et seq.*:

Section 301, 29 U.S.C. 185 ..... 6, 7

Section 301(a), 29 U.S.C. 185(a) 5, 6

Postal Reorganization Act of 1970, 39 U.S.C. 101 *et seq.*:

39 U.S.C. 1203 5

39 U.S.C. 1208(b) 2, 4, 5-6, 7

Railway Labor Act, 45 U.S.C. 151 *et seq.* 6

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1078

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO, PETITIONER

v.

UNITED STATES POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-12) is reported at 609 F. 2d 503. The opinion of the district court (Pet. App. 13-25) is reported at 463 F. Supp. 54.

JURISDICTION

The judgment of the court of appeals was entered on October 12, 1979. The petition for a writ of certiorari was filed on January 9, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court properly dismissed this action to enforce the settlement of a grievance arising under a national collective bargaining agreement on the ground that petitioner, which is neither an exclusive

bargaining agent nor a signatory to that collective bargaining agreement, lacked standing to bring the action under 39 U.S.C. 1208(b).

2. Whether the district court properly dismissed this action on the ground that petitioner failed to exhaust contractual grievance and arbitration procedures.

STATUTORY PROVISION INVOLVED

The pertinent portion of the Postal Reorganization Act of 1970, 39 U.S.C. 1208(b), is set forth at Pet. 2.

STATEMENT

Petitioner Pittsburgh Metro Area Postal Workers Union brought this action against the United States Postal Service to enforce a settlement of a grievance under a collective bargaining agreement (Pet. App. 13). That agreement was negotiated by the Postal Service and four national postal employee unions. Petitioner, which represents certain Pittsburgh area postal workers, was not a signatory to the agreement (Pet. App. 18; Agreement, pages 1, 123).[1]

Local unions, such as petitioner, have certain rights and duties under the collective bargaining agreement, among them the right to negotiate "local memoranda of understanding" on certain specified subjects, provided the terms of the local provisions are not inconsistent with the national agreement (Pet. App. 18; Agreement, Art. XXX). Grievances for violations of the local agreements, like grievances under the national agreement, must be

[1]"Agreement" refers to the relevant collective bargaining agreement, which was filed as Exhibit A to the Complaint. A copy of the agreement may be found in a pocket in the back inside cover of the appendix to the briefs in the court of appeals.

processed through the grievance-arbitration procedure of the national agreement (Pet. App. 18; Agreement, Art. XV). No grievance may be submitted to arbitration without the written authorization of the president of the national union concerned (*ibid.*).

This case arose out of two contract disputes, both involving the distribution of secondary mail, *i.e.*, mail that is ready for sorting into bundles for individual carrier routes (Pet. App. 13). Before July 1976, most incoming secondary mail was distributed at the Main Office in downtown Pittsburgh for 35 branches and stations. Seven branches and stations, however, distributed their own secondary mail (Pet. App. 13-14). On July 12, 1976, the Postal Service transferred secondary mail distribution for three of the seven stations to the Main Office. On October 7, 1976, petitioner filed a grievance alleging that some secondary mail was still being sent to those three stations and that this violated provisions of the local and national agreements (Pet. App. 14; A. 24a-25a).[2] The dispute was settled without resort to final arbitration after the Postal Service agreed that "the amount of mail sent to the stations and branches must be predicated on their capabilities to work this mail without jeopardizing any overtime opportunities for mail processing clerks" (Pet. App. 14). This preserved maximum overtime opportunities for clerks at the Main Office with respect to that mail (*ibid.*).

A second dispute arose in April 1978, when the Postal Service announced a decision to transfer secondary distribution of two classes of mail, Irregular Parcel Post and First Class Small Parcels and Rolls, to certain

[2]"A." refers to the appendix to the briefs in the court of appeals.

stations and branches. Petitioner objected to this decision, but instead of filing a grievance, it brought this suit in the United States District Court for the Western District of Pennsylvania, contending that the second decision violated the settlement of the first dispute (Pet. App. 14-15). Jurisdiction was alleged on the basis of the provision governing suits for violation of contract in the Postal Reorganization Act of 1970 (PRA), 39 U.S.C. 1208(b).

The district court dismissed the suit on two independent grounds. First, it held that petitioner, as a local union, lacked standing "to enforce the Postal Service's contractual obligations under the national agreement," noting that petitioner had not shown that it had authorization from the national parent union (American Postal Workers Union) to bring the suit (Pet. App. 18). Second, it held that petitioner had failed to exhaust the contractual grievance procedures (*id.* at 21-24). The court noted that it was unclear whether the facts leading to the two disputes were sufficiently similar to permit bypassing the grievance procedure on the second dispute, and it observed that such questions are themselves properly resolved through grievance and arbitration procedures (*id.* at 21).[3]

The court of appeals affirmed "for the reasons set forth in the district court opinion" (Pet. App. 11-12).

---

[3]The district court also suggested that the 1976 settlement was not judicially enforceable because the national agreement did not designate settlement agreements (in contrast to arbitrators' decisions) as final and binding (Pet. App. 18-20).

ARGUMENT

The decisions of the courts below are correct and do not conflict with decisions of this Court or any court of appeals.[4] Further review is accordingly not warranted.

1. Petitioner contends (Pet. 5) that, because it is a labor organization, it qualifies as a "labor organization" for purposes of 39 U.S.C. 1208(b) and is thus entitled to sue under that provision to enforce a collective bargaining agreement with the Postal Service. The employees on whose behalf petitioner sues, however, are members of a bargaining unit that is national in scope, and it is petitioner's parent union that the Postal Service has recognized as the exclusive bargaining representative for that unit, pursuant to 39 U.S.C. 1203. See *United States Postal Service*, 208 N.L.R.B. 948 (1974). The national union, not petitioner, negotiated and signed the basic collective bargaining agreement that petitioner seeks to enforce. Cases decided under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), which petitioner concedes (Pet. 5-6) is analogous to Section

---

[4]The question whether local postal unions have standing to bring suit under Section 1208(b) is at issue in the Fifth Circuit in *National Association of Letter Carriers, AFL-CIO Branch No. 421* v. *United States Postal Service*, and *American Postal Workers Union, AFL-CIO, San Antonio Local* v. *United States Postal Service*, Nos. 78-2647 and 78-2691 (consolidated), and in the Fourth Circuit in *Columbia Local, American Postal Workers Union, AFL-CIO* v. *William F. Bolger, et al.*, No. 79-1273.

At least two district courts appear to have permitted local branches of a national postal union to bring actions involving the national agreement. *American Postal Workers Union, Dallas, Tex. Area Local* v. *United States Postal Service*, 396 F. Supp. 608 (N.D. Tex. 1975); *American Postal Workers Union* v. *United States Postal Service*, 356 F. Supp. 335 (E.D. Tex. 1972). In neither case, however, was the question of the locals' right to bring the action put in issue.

1208(b) of the PRA,[5] as well as cases decided under the Railway Labor Act, 45 U.S.C. 151 *et seq.*, under which similar problems involving the relationship between local and national unions arise, clearly establish that a local union such as petitioner generally may not sue to enforce provisions of a national collective bargaining agreement to which it is not a party. See, *e.g.*, *Local 13, International Longshoremen's Union* v. *Pacific Maritime Ass'n*, 441 F. 2d 1061, 1064 (9th Cir. 1971), cert. denied, 404 U.S. 1016 (1972); *Local 12405, District 50, UMW* v. *Martin Marietta Corp.*, 328 F. 2d 945 (7th Cir. 1964); *District 100, IAM* v. *Compagnie Nationale Air France*,

---

[5]Section 301(a) of the LMRA, 29 U.S.C. 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Courts generally look to the body of law developed under Section 301 of the LMRA in construing Section 1208(b) of the PRA. *National Association of Letter Carriers* v. *United States Postal Service*, 590 F. 2d 1171, 1174 (D.C. Cir. 1978); *Miles* v. *United States Postal Service*, 561 F. 2d 1348 (9th Cir. 1977). See also *Malone* v. *United States Postal Service*, 526 F. 2d 1099 (6th Cir. 1975); *National Association of Letter Carriers* v. *Sombrotto*, 449 F. 2d 915 (2d Cir. 1971).

414 F. Supp. 538 (E.D.N.Y. 1976).[6] Although some courts have recognized an exception for suits brought by local unions with the authorization of their parent union (*BRAC* v. *REA Express, Inc.*, 344 F. Supp. 1370 (S.D.N.Y. 1972); see also *National Post Office Mail Handlers Local 305* v. *United States Postal Service*, 594 F. 2d 988 (4th Cir. 1979)), that exception does not aid petitioner here, because petitioner has shown no such authorization.

Two significant labor policies underlie these decisions. First, the decisions assure that the signatory to the collective bargaining agreement—the national union—can screen the grievances that are pursued beyond the early informal steps, "so that the interests of *all* its principals may be best represented" (*District 100, IAM* v. *Compagnie Nationale Air France*, *supra*, 414 F. Supp. at 541-542 (emphasis in original)). Second, they prevent the chaos that would result "if every subordinate unit were empowered to bring suit" without authorization from the national union (*BRAC* v. *REA Express, Inc.*, *supra*, 344

---

[6]Contrary to petitioner's contention (Pet. 5-6), neither this Court's decision in *Retail Clerks International Ass'n, Local Unions Nos. 128 and 633* v. *Lion Dry Goods, Inc.*, 369 U.S. 17 (1962), nor the Ninth Circuit's decision in *Miles* v. *United States Postal Service*, 561 F. 2d 1348 (1977), conflicts with this principle. In *Lion Dry Goods*, two local unions not certified by the NLRB as exclusive bargaining representatives were permitted to sue under Section 301 of the LMRA, but they were suing to enforce a strike settlement agreement that they (not the national union) had negotiated with the employer to end a strike at the employer's two department stores, and their status as employee representatives was not shown to be dependent on the representative status of their parent union. In *Miles*, the court held only that a nonunion employee had standing to sue the Postal Service under Section 1208(b) of the PRA to enforce what he alleged was an oral agreement with a postmaster to hire him on a full-time basis. No attempt to enforce a collective bargaining agreement was involved.

F. Supp. at 1372). To grant standing to petitioner to bring suit, without the authorization of its parent national union, to enforce the collective bargaining agreement signed by the national union would be contrary to these policies.[7]

2. Petitioner attacks the alternative ground for the dismissal of its action—failure to exhaust the grievance procedure[8]—by contending (Pet. 9) that the current dispute was conclusively resolved by the settlement of the 1976 grievance and thus resort to the grievance procedure was unnecessary. But as the district court correctly pointed out (Pet. App. 21), resolution of that very question is properly committed to the grievance machinery rather than to the courts. *Local 103, International Union of Electrical Workers* v. *RCA Corp.*, 516

[7]The fact that the contract violation allegations underlying petitioner's suit are based on both the national agreement and the local agreement (A. 33a-34a) does not require a different conclusion. As noted above (page 2, *supra*), petitioner's right, under Article XXX of the national agreement, to implement the terms of that agreement by negotiations on 22 specified subjects, is limited to the negotiation of provisions consistent with the national agreement. Petitioner was not empowered to take grievances arising under its locally negotiated provisions to arbitration without the consent of the national president. Controls on local unions with respect to their attempts to secure final and binding resolutions of grievances under provisions of local agreements (whether such resolutions are sought through arbitration or through suits in federal court) are obviously important, because interpretations of a local agreement that are inconsistent with other local agreements or with the national agreement could be detrimental to the interests of other employees represented by the national union.

[8]It is a well settled principle of labor law that a union must exhaust the contractual remedies provided in the collective bargaining agreement before seeking judicial intervention. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 566 (1960); *National Post Office Mail Handlers Local No. 305* v. *United States Postal Service, supra*, 594 F. 2d at 991.

F. 2d 1336, 1340-1341 (3d Cir. 1975). Cf. *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 546-547 (1964). Because the factual question whether the settlement of the previous dispute governs the present dispute is not for the courts to decide, it is irrelevant whether petitioner could have proven the allegation in its complaint that the two disputes are the same. Similarly, there is no merit to petitioner's related contention (Pet. 9) that because "the allegations of [a complaint] are taken as admitted and [a complaint] is liberally construed in favor of the plaintiff" (*Jenkins* v. *McKeithen*, 395 U.S. 411, 421 (1969)), its allegation respecting the identity of the two disputes precluded dismissal of its suit on exhaustion grounds. That contention also is based on the erroneous premise that the district court is the proper forum for resolving this issue.[9]

[9]We also agree with the district court's suggestion (Pet. App. 18-20) that because the provision of the national agreement setting out the grievance procedure (Art. XV, Section 3) designates only an arbitrator's decision as final and binding, the settlement agreement reached at a pre-arbitration step is not judicially enforceable. See *General Drivers, Warehousemen & Helpers, Local 89* v. *Riss & Co.*, 372 U.S. 517 (1963).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

ALICE DANIEL
Assistant Attorney General

ROBERT E. KOPP
HOWARD S. SCHER
Attorneys

STEPHEN E. ALPERN
Associate General Counsel

ANTHONY W. DUCOMB
Attorney
United States Postal Service

MARCH 1980

DOJ-1980-03